K 1943

File No. O Motor Tax 43

Legal Department

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Subject:— Opinions under the Bombay Motor Vehicles Tax Act, 1935

P.6/B

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C O N T E N T S.

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Office of the R.L.A.

Under section 10(2) of the Bombay Motor Vehicles Tax Act, 1935, the payment of a penalty in the prescribed manner and in the prescribed time and to the prescribed officer in addition to the tax due, if any, is a condition precedent to the composition of the offence with which the defaulter is charged. Any compoosition without payment of a penalty in the prescribed manner would be in contravention of section 10(2). A wa ver of penalty amounts to a composition of the offence without payment of the prescribed penalty and as such it would be unlawful. If the Registering authority or any Inspector is to be given power to compose without payment of fine in cases where the recovery of such fine is considered to be harsh, section 10(2) will have to be suitably amended. Without such amendment any rule framed under section 20 for waiving penalty would be inconsistent with section 10(2) and as such ultra vires. The proposal made by the Secretary to the Provincial Transport Authority in his letter at page 1 ante would not be legally feasible. The view expressed in the H.D. note of 18-12-42 is correct.

The difficulty for the future might be met by the imposition of a nominal penalty. For that purpose it would be necessary to amend rule 17 of the Bombay Motor Vehicles Tax Rules by the Addition at suitable places of the words 'or such smaller amount as the registering authority may decide'.

Id/- P.H.M.
2/4
Remembrancer of Legal Affairs.

U.R. to H.D. No. 2452, dated the 3rd April 1943.

EVY. 6/7.

It is true that "unladen weight" as defined in section 2(34) of the Motor Vehicles Act, 1939, means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of a driver or attandant. But "tractor" as defined in section "2(30 means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois but excludes a road roller, and "registered laden weight" as defined in section 2(27) means in respect of any vehicle the ~~xxxx~~ total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle. It is clear from these provisions that a tractor which is not itself constructed to carry any load can have no registered laden weight and consequently the calculation of the registered laden weight of a tractor as the unladen weight plus driver or attendant would not be permissible.

2. The view taken in H.D. office note about amending the Bombay Motor Vehicles Tax Act to make tractors liable to a higher tax is correct.

Id/- P.N.M.

20/9

Remembrancer of Legal Affairs.

U.R. to H.D., No. 6352, dated the 21st September 1943.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether on a change after payment of tax in the use of a motor vehicle making it liable for a higher tax under the Bombay Motor Vehicles Tax Act, 1935, it would be possible for Government to enforce payment of an additional tax.

2. Sub-section (1) of section 6 of the Bombay Motor Vehicles Tax Act, 1935 provides for making a declaration in the prescribed form by the owner who has possession or control or a motor vehicle used or kept for use in the Presidency and for payment by him of the tax which appears by such declaration to be liable to pay. Under rule 4 of the Bombay Motor Vehicles Tax Rules 1940 the declaration under sub-section (1) of section 6 shall be in form "A T". Reading the contents of the form "AT" with the Registration certificate of a vehicle under the Motor Vehicles Act, 1939 it appears that the Registering Authority would assess the tax under the Bombay Motor Vehicles Tax Act according to the rates specified in Schedule I. Under Articles III and V in Schedule I the rates vary according as a vehicle is used for the transport or haulage of goods or materials or for plying for hire and for the transport of passengers. If during the period for which the tax has been paid there is a change in the use of the vehicle, making it liable to pay a higher tax, the change in use without payment of additional tax would seem unjustifiable, but there does not appear any provision either in the Bombay Motor Vehicles Tax Act or the Rules thereunder requiring payment of such additional tax. If a vehicle is altered a new declaration is necessary and the additional tax consequent thereon is required to be paid under section 7. "Additional Tax" contmplated under clause (a) of section 10(1) is the tax payable under section 7 for alteration of the vehicle. Section 7 deals only with

alteration in the structure or equipment of the vehicle and not with a change in the vehicle's use. It appears therefore that an amendment of the Act as proposed by the Regional Transport Officer at page 3 would be necessary.

Sd/- P.N.M.
23/12.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 9412, dated 24th December 1943.

EVY. 7/7.

Office of the R.L.A.

The obligation to refund the tax under section 5 of the Bombay Motor Vehicles Tax Act, 1935, is unqualified and absolute, whereas under clause (b) of section 5(1) of the Madras Motor Vehicles Taxation Act, 1931, it is not so. Under that provision it would be competent for the Madras Government to disallow rebate in certain circumstances. In exercise of that power the Madras Government has issued the notification II at page 31 ante. To ~~xk~~ fall in line with the Madras Government as desired by the Central Government the Bombay Motor Vehicles Tax Act will have to be amended suitably. No executive order disallowing refund in certain cases would be competent.

Sd/- P.N.Moos,
Remembrancer of Legal Affairs.

U.R. to H.D., No. 9870, dated the 1st December 1943.

EVY. 7/7/